REMARKS

Claims 1-6, 8-15, 17-21 and 24-33 are pending in the application.

In the Office Action Made Final, the Examiner maintained the rejection of claims 1-6, 8-15, 17-21 and 24-33. Claims 1-6, 8-15, 17-21 and 25-33 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2002/0187799 A1 ("Haartsen") in view of U.S. Patent Publication No. 2002/0034172 A1 ("Ho") and further in view of the application's allegedly disclosed prior art.

The arguments and rebuttal evidence provided by Applicant in the Amendment of September 21, 2005 are hereby incorporated by reference herein in their entirety. The Examiner is invited to review those arguments and rebuttal evidence at this time in reconsidering the rejections that were maintained in the Office Action Made Final.

At this time, Applicant would like to address the issues clarified by the Examiner in the Office Action Made Final.

In response to Applicant's argument as set forth in the Amendment of September 21, 2005 (1) that Ho teaches away from the claimed invention, (2) that Haartsen teaches away from the claimed invention, and (3) that the application's allegedly disclosed prior art teaches away from the claimed invention, the Examiner relies on a single rebuttal argument based on M.P.E.P. § 2141.02. Presumably, if Applicant traverses the Examiner's single rebuttal argument based on M.P.E.P. § 2141.02, then the Examiner would be more inclined to accept the persuasiveness of Applicant's arguments as set forth in the Amendment of September 21, 2005 in view of M.P.E.P. § 2145(X)(D)(1), namely, that "teaching away" from the "claimed invention" is a "significant factor to be considered in determining obviousness". M.P.E.P. at page 2100-169 (Rev. 3, August 2005).

Reproduced, as a courtesy to the Examiner, is M.P.E.P. § 2141.02 (IV) in relevant part:

> >However, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed...." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).<

M.P.E.P. at page 2100-132.

First, Applicant respectfully draws the attention of the Examiner to title of section VI of M.P.E.P. § 2141.02 which is "PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS". Respectfully, this is precisely the point Applicant made in the Amendment of September 21, 2005. In fact, M.P.E.P. § 2145(X)(D)(1) is even more in line with Applicant's point of view by stating that "teaching away" from the "claimed invention" is a "significant factor to be considered in determining obviousness". M.P.E.P. at page 2100-169.

Second, Applicant respectfully draws the attention of the Examiner to the very first sentence of the first paragraph of section VI of M.P.E.P. § 2141.02 which states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention". M.P.E.P. at page 2100-132 (underlining in original). Is this not what Applicant attempted to show in the Amendment of September 21, 2005? Especially, in view of M.P.E.P. § 2145(X)(D)(1) at page 2100-169, is not Applicant's argument and rebuttal evidence even more persuasive?

Third, according to the cited section of M.P.E.P. § 2141.02, criticism, discrediting or discouragement carries additional weight in a teaching away argument. It should be noted that Haartsen teaches away from, for example, "an error-correcting coding mechanism operable to vary a level of the error-correcting coding applied to the digitally-encoded data within the outgoing transmissions, such that the first transmission range is effectively increased up to a maximum transmission range corresponding to a maximum level of error-correcting coding". In the BACKGROUND section of Haartsen, Haartsen disparages changing the coding rate or modulation scheme because this may affect adversely affect the net user rate.

> Because uncoordinated radio systems are unable to control interference levels, the effectiveness of existing link adaptation techniques is limited in uncoordinated radio systems.... Link adaptation schemes based on changing the coding rate or changing the modulation scheme may be inadequate to address interference caused by the near-far problem. Also, existing link adaptation schemes may affect the net user rate. For example, the channel bandwidth in a GSM system is constant. Increasing the amount of FEC coding or implementing a more robust modulation scheme typically decreases the net user rate.

Haartsen at paragraph [0014], lines 6-24. Thus, Haartsen teaches away from "an error-correcting coding mechanism operable to vary a level of the error-correcting coding ... such that the first transmission range is effectively increased up to a maximum transmission range corresponding to a maximum level of error-correcting coding". As Haartsen understands the problem, this type of error correcting would have an adverse affect on the net user rate.

Haartsen further states "there is a need for link adaptation techniques that attempt to maintain a substantially constant net user rate and bit-error-rate on the communication channel under changing signal and interference conditions". Haartsen at paragraph [0015], lines 4-8.

Thus, because Haartsen is very concerned with the adversely affecting the net user rate, Haartsen disparages or teaches away from "link adaptation schemes" such as "[i]ncreasing the amount of FEC coding or implementing a more robust modulation scheme" that "typically decreases the net user rate". Haartsen at paragraph [0014], lines 22-24.

In view of this sensitivity to maintaining "a substantially constant net user rate", (Haartsen at paragraph [0015], lines 5-6), Haartsen's teachings appear to be teaching away from effectively increasing a transmission range up to a maximum transmission range corresponding to a maximum level of error-correcting coding.

Such teaching away arguments, punctuated with specific and direct disparagement of the claimed invention, traverse the Examiner's argument that the prior art's mere disclosure of more than one alternative does not constitute a teaching away.

Accordingly, Applicant again respectfully draws the attention of the Examiner to M.P.E.P. § 2145(X)(D)(1), namely, that "teaching away" from the "claimed invention" is a "significant factor to be considered in determining obviousness". M.P.E.P. at page 2100-169.

In view of at least the foregoing and the remarks as set forth in the Amendment of September 21, 2005, it is respectfully submitted that the pending claims 1-6, 8-15, 17-21 and 24-33 are in condition for allowance. If anything remains in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

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Resp. AF dated Feb. 2, 2006
In Reply to Office Action Made Final of Dec. 2, 2005

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: February 2, 2006

Respectfully submitted,

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